

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

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MUI T. LUU,

Plaintiff,

v.

KEVIN ESTERLY, and  
LEHIGH VALLEY ACADEMY  
REGIONAL CHARTER SCHOOL,  
Defendants.

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No. 18-cv-01897

**ORDER**

**AND NOW**, this 14<sup>th</sup>, day of February, 2019, upon consideration of Plaintiff's Amended Complaint, ECF No. 11; Defendant Lehigh Valley Academy Regional Charter School's (LVA) Motion to Dismiss for Failure to State a Claim, ECF No. 14; Plaintiff's Response to LVA's Motion to Dismiss, ECF No. 15; Plaintiff's Notice informing the Court of Defendant Esterly's plea in the criminal charges filed against him in Pennsylvania state court and that the Pennsylvania state court sentenced Defendant Esterly December 10, 2018, ECF No. 16; and this Court's August 1, 2018 Order that granted Esterly's request for a stay pending the resolution of the aforementioned criminal charges, ECF No. 12, and for the reasons set forth in the accompanying Opinion, **IT IS ORDERED** that:

1. Defendant LVA's Motion to Dismiss for Failure to State a Claim, ECF No. 44, is **GRANTED**.
2. The claims in Counts IV, V, and VI are **DISMISSED with prejudice**.<sup>1</sup>
3. The stay as to Defendant Esterly is **LIFTED**.

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<sup>1</sup> The Court dismisses these Counts with prejudice because: (1) as a matter of law, there is no sort of special relationship between LVA and Luu such that she was a foreseeable victim; (2) LVA is immune from a claim of negligent infliction of emotional distress under Pennsylvania law; and (3) LVA is immune from punitive damages under 42 U.S.C. § 1983. Amendment to these Counts would be futile.

4. The state law claims in Counts I, II, and III are **DISMISSED without prejudice** to be refiled in the proper state court.

5. The Clerk of Court is directed to **CLOSE** this case.

BY THE COURT:

/s/ Joseph F. Leeson, Jr.

JOSEPH F. LEESON, JR.

United States District Judge